

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MIKEL YOUNG,

Plaintiff,

V.

TEAMSTERS 767,

Defendant.

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No. 3:23-cv-1720-N-BN

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE**

Plaintiff Mikel Young filed a *pro se* complaint under Title VII of the Civil Rights Act of 1964 against Defendant Teamsters 767 for discrimination and retaliation, alleging that he has “not worked in 2 years after filing [an] EEOC complaint [against the] Teamsters and UPS,” while “another individual [who was] terminated for work place violence [] was allowed to return to work the same month.” Dkt. No. 3 at 1.

Chief United States District Judge David C. Godbey referred the complaint to the undersigned United States magistrate judge for pretrial management under 28 U.S.C. § 636(b) and a standing order of reference.

The Court will grant Young’s motion for leave to proceed *in forma pauperis* (IFP) [Dkt. No. 4] through a separate order, subjecting the complaint to screening under 28 U.S.C. § 1915(e)(2).

And the undersigned enters these findings of fact, conclusions of law, and recommendation that, to the extent and for the reasons set out below, the Court

should dismiss the complaint.

Legal Standards

Section 1915(e)(2) authorizes the Court to dismiss a complaint filed IFP if it fails to state a claim on which relief may be granted. *See* 28 U.S.C. § 1915(e)(2)(B)(ii). “The language of § 1915(e)(2)(B)(ii) tracks the language of Federal Rule of Civil Procedure 12(b)(6).” *Black v. Warren*, 134 F.3d 732, 733-34 (5th Cir. 1998) (per curiam). The pleading requirements as set out in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), therefore apply to the Court’s screening of a complaint filed IFP.

Considering these standards, Federal Rule of Civil Procedure 8(a)(2) does not require that a complaint contain detailed factual allegations, just “enough facts to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570.

“The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Iqbal*, 556 U.S. at 678. So, “[w]here a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and plausibility of ‘entitlement to relief.’”” *Id.* (quoting *Twombly*, 550 U.S. at 557). On the other hand, “[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*

“The burden is on the plaintiff to frame a ‘complaint with enough factual matter (taken as true) to suggest’ that he or she is entitled to relief.” *Robbins v.*

Oklahoma, 519 F.3d 1242, 1248 (10th Cir. 2008) (quoting *Twombly*, 550 U.S. at 556).

But, while a court must accept a plaintiff's allegations as true, it is "not bound to accept as true a legal conclusion couched as a factual allegation." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555). In fact, "the court does not 'presume true a number of categories of statements, including,'" in addition to legal conclusions, "mere labels; threadbare recitals of the elements of a cause of action; conclusory statements; and naked assertions devoid of further factual enhancement." *Armstrong v. Ashley*, 60 F.4th 262, 269 (5th Cir. 2023) (quoting *Harmon v. City of Arlington, Tex.*, 16 F.4th 1159, 1162-63 (5th Cir. 2021)).

So, to avoid dismissal under Section 1915(e)(2)(B)(ii), plaintiffs must "plead facts sufficient to show" that the claims asserted have "substantive plausibility" by stating "simply, concisely, and directly events" that they contend entitle them to relief. *Johnson v. City of Shelby, Miss.*, 574 U.S. 10, 12 (2014) (per curiam) (citing FED. R. CIV. P. 8(a)(2)-(3), (d)(1), (e)); *see also Inclusive Communities Project, Inc. v. Lincoln Prop. Co.*, 920 F.3d 890, 899 (5th Cir. 2019) ("Determining whether a complaint states a plausible claim for relief is 'a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.'" (quoting *Iqbal*, 556 U.S. at 679)).

Analysis

The few facts that Young has alleged stop short of showing that the defendant plausibly violated Title VII, a statute that "imposes liability on employers and labor unions that violate the act's provisions." *E.g., Atencio v. Torres*, No. 3:19-cv-00011,

2020 WL 1646884, at *2 (S.D. Tex. Mar. 25, 2020) (citations omitted).

To plausibly allege (and ultimately prove) discrimination and retaliation claims related to one's employment requires that a plaintiff either rely on direct evidence of discrimination or proceed under a burden-shifting analysis.

“[D]irect evidence is rare” and has been defined by the United States Court of Appeals for the Fifth Circuit “as ‘evidence which, if believed, proves the fact without inference or presumption.’” *Clark v. Champion Nat’l Sec., Inc.*, 952 F.3d 570, 579 (5th Cir. 2020) (footnotes omitted). For example, “[a] statement or document which shows ‘on its face that an improper criterion served as a basis – not necessarily the sole basis, but a basis – for the adverse employment action [is] direct evidence of discrimination.’” *Clark*, 952 F.3d at 579 (footnote omitted).

The facts alleged do not support direct evidence of discrimination or retaliation. So, turning to the first step in the burden-shifting analysis, Young must allege facts to articulate a prima facie case as to each cause of action alleged.

The prima facie elements of discrimination are that a plaintiff

(1) is a member of a protected group; (2) was qualified for the position at issue; (3) was discharged or suffered some adverse employment action by the employer; and (4) was replaced by someone outside his protected group or was treated less favorably than other similarly situated employees outside the protected group.

McCoy v. City of Shreveport, 492 F.3d 551, 556 (5th Cir. 2007) (citation omitted); see also *Wesley v. Gen. Drivers, Warehousemen & Helpers Local 745*, 660 F.3d 211, 214 (5th Cir. 2011) (setting out that a prima facie racial discrimination claim against a union requires a plaintiff to “show that he was subjected to an adverse union action” and “show that he was treated less favorably by the union than employees of different

racess”).

“In the retaliation context, a *prima facie* case requires a showing that (1) [the plaintiff] engaged in a protected activity pursuant to one of the statutes, (2) an adverse employment action occurred, and (3) there exists a causal link connecting the protected activity to the adverse employment action.” *Munoz v. Seton Healthcare, Inc.*, 557 F. App’x 314, 321 (5th Cir. 2014) (citation omitted); *see also, e.g., Woods v. Teamsters Local 767*, No. 4:18-cv-218-BP, 2020 WL 6203567, at *7 (N.D. Tex. Oct. 22, 2020) (“A labor organization ... cannot discriminate against any member ‘because [s]he has opposed any practice made an unlawful employment practice by [Title VII] or ... made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under [Title VII].’” (quoting 42 U.S.C. § 2000e-3(a); citation omitted)).

A plaintiff need not establish a *prima facie* case at the pleading stage. *See Cicalese v. Univ. of Tex. Med. Branch*, 924 F.3d 762, 766 (5th Cir. 2019); *Raj v. La. State Univ.*, 714 F.3d 322, 331 (5th Cir. 2013).

But a plaintiff must “plead sufficient facts on all of the ultimate elements of his claim to make his case plausible,” *Chhim v. Univ. of Tex. at Austin*, 836 F.3d 467, 470 (5th Cir. 2016) (citations omitted), so a district court may rely on the *prima facie* elements “to frame [its] inquiry” at the pleading stage, *Norsworthy v. Hous. Indep. Sch. Dist.*, 70 F.4th 332, 336 (5th Cir. 2023); *see also Meadows v. City of Crowley*, 731 F. App’x 317, 318 (5th Cir. 2018) (per curiam) (*Raj* “does not exempt a plaintiff from alleging facts sufficient to establish the elements of her claims.” (citations omitted));

Body by Cook, Inc. v. State Farm Mut. Auto. Ins., 869 F.3d 381, 387 n.1 (5th Cir. 2017) (“Although not a pleading standard, this court has looked to the ‘evidentiary framework’ set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), to determine whether a plaintiff pleads discriminatory intent.” (cleaned up)).

And, as to discrimination, plaintiffs “must plausibly set out facts that the ‘defendant took the adverse employment action against [them] *because of* [a] protected status.’” *Sanchez v. Chevron N. Am. Exploration & Prod. Co.*, No. 20-30783, 2021 WL 5513509, at *6 (5th Cir. Nov. 24, 2021) (per curiam) (quoting *Raj*, 714 F.3d at 331; emphasis by *Raj*).

That is, as to discrimination based on race or national origin, for example, “a plaintiff must allege ‘facts, direct or circumstantial, that would suggest the employer’s actions were based on the plaintiff’s race or national origin or that the employer treated similarly situated employees of other races or national origin more favorably.’” *Id.* (cleaned up; quoting *Raj*, 714 F.3d at 331).

In sum, at this stage, the Court must ask whether enough facts, accepted as true, allege an actionable employment-based claim. *See Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512-13 (2002).

And, if a plaintiff “has not pled [enough] facts,” it is “proper[to] dismiss” the complaint (or a claim therein). *Meadows*, 731 F. App’x at 318; *see also Cicalese*, 924 F.3d at 766-67 (noting that the district court’s “task is to identify the ultimate elements of [the applicable employment-related] claim and then determine whether the” plaintiff has pled those elements but that a “district court err[s if it] require[es a

plaintiff] to plead something beyond those elements to survive a motion to dismiss”).

Even if Young’s complaint should not be dismissed as facially time barred, and even if his allegations raise a plausible inference that he is a member of a protected group, Young’s allegation that “a non African American,” “a Mexican” was treated more favorably, Dkt. No. 3 at 1, does not support the required element that someone outside Young’s protected group “under nearly identical circumstances” was treated more favorably. *Lee v. Kansas City S. Ry. Co.*, 574 F.3d 253, 260 (5th Cir. 2009); *see also Reyna v. Donley*, 479 F. App’x 609, 611-12 (5th Cir. 2012) (per curiam) (“An employee must proffer a comparator who was treated more favorably ‘under nearly identical circumstances,’ which is satisfied when ‘the employees being compared held the same job or responsibilities, shared the same supervisor or had their employment status determined by the same person, and have essentially comparable violation histories.’” (quoting *Lee*, 574 F.3d at 260)).

Young has therefore not “allege[d] ‘facts, direct or circumstantial, that would suggest the [defendant’s] actions were based on [Young’s] race or national origin or that the [defendant] treated similarly situated employees of other races or national origin more favorably.’” *Sanchez*, 2021 WL 5513509, at *6.

And, insofar as Young alleges a claim for retaliation based on being terminated sometime after filing an EEOC complaint, he fails to allege any facts to at least temporally link these two events.

So Young has not alleged an adverse employment action “because of [a] protected status.” *Id.* And the Court should dismiss the complaint.

Leave to Amend

The time to file objections to this recommendation (further explained below) allows Young an opportunity to cure the deficiencies identified above (that is, to provide enough facts to plausibly allege all elements of the claims asserted) and thus show the Court that this case should not be dismissed with prejudice at this time and that the Court should instead grant Young leave to amend. *See Scott v. U.S. Bank Nat'l Ass'n*, 16 F.4th 1204, 1209 (5th Cir. 2021) (per curiam) (“A court should freely give leave to amend when justice so requires, FED. R. CIV. P. 15(a)(2), but a movant must give the court at least some notice of what his or her amendments would be and how those amendments would cure the initial complaint’s defects. *Thomas v. Chevron U.S.A., Inc.*, 832 F.3d 586, 590 (5th Cir. 2016). If the plaintiff does not provide a copy of the amended complaint nor explain how the defects could be cured, a district court may deny leave. *McKinney v. Irving Indep. Sch. Dist.*, 309 F.3d 308, 315 (5th Cir. 2002) (affirming denial of leave to amend where plaintiffs ‘failed to amend their complaint as a matter of right, failed to furnish the district court with a proposed amended complaint, and failed to alert both the court and the defendants to the substance of their proposed amendment’).”).

If Young fails to show that leave to amend should be granted, the Court should dismiss this case with prejudice.

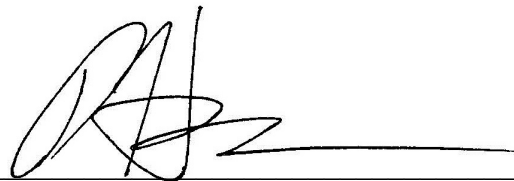
Recommendation

The Court should dismiss this action with prejudice unless, within the time to file objections, Plaintiff Mikel Young satisfactorily shows a basis to amend the

complaint to allege a plausible claim.

A copy of these findings, conclusions, and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of these findings, conclusions, and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's findings, conclusions, and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).

DATED: August 14, 2023

A handwritten signature in black ink, appearing to be 'D. Horan', written over a horizontal line.

DAVID L. HORAN
UNITED STATES MAGISTRATE JUDGE